ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions	)	
of the Telecommunications Act of 1996	)	

RESPONSE OF U S WEST, INC.
TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION

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SUMMARY

U S WEST, Inc. has the following views on certain issues that have been raised in petitions for reconsideration or clarification of the Commission's UNE Remand Order.

Circuit Switching Issues. There is no basis for the Commission to narrow the unbundled local switching exception by revising upward the current four-line limitation. Indeed, the record evidence would support eliminating the line limitation entirely. If there is to be a limitation, a four-line limit -- reflecting a volume level that, in the Commission's judgment, makes reliance on alternative switching arrangements feasible -- is a more sensible application of the impairment standard than adopting a higher threshold. By contrast, the Commission should grant the petitions seeking reconsideration of the decision to limit the unbundled switching exception to density zone 1. That decision was based on information from only one ILEC, and different ILECs define density zone 1 differently. Accordingly, the Commission should augment the record on this issue and issue a supplemental order based on more complete information.

Packet Switching Issues. The Commission's decision to refrain from requiring unbundling of packet switching is fully supported by both the law and the factual record, and it should not be modified. Moreover, the Commission should reject AT&T's effort to cut the heart out of that decision (and of a related decision in the Line Sharing Order) by creating a broad exception that would require ILECs to install DSLAMs and provide them to CLECs at UNE prices wherever a CLEC provides voice service using the "UNE platform." Granting reconsideration on either of these packet switching issues would seriously undermine the Commission's effort to encourage facilities-based investment and innovation in the advanced services market.

Loop Issues. The Commission should reject those petitions that seek to deny ILECs from receiving compensation for the real costs that they incur, on behalf of CLECs, in conditioning loops for xDSL and in making IDLC loops available on an unbundled basis. Contrary to the claims set forth in these petitions, forward-looking economic pricing models do not -- and indeed legally cannot -- provide any basis for requiring ILECs to provide free labor to CLECs upon request.

Other Issues. The Commission should adhere to its decision to reject the unbundling of AIN triggers, because requiring such unbundling would pose a serious threat to the reliability of the network and the protection of customer proprietary information. The Commission should likewise adhere to its decision to refrain from the general unbundling of enhanced extended link ("EELs") pending a decision from the Eighth Circuit Court of Appeals on the matter of UNE combinations. The Commission also should reject MGC's request for intrusive additional regulatory requirements concerning dark fiber. Finally, there is no real need for new rules to address ILEC disclosure of information on remote termination points, but if any such rules are adopted they should take the same approach as the Commission followed with respect to loop qualification information.

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Pursuant to 47 C.F.R. § 1.429 and the Commission's Public Notice of February 28, 2000,[1] U S WEST, Inc. ("U S WEST") submits this response to express its views on certain issues that have been raised in petitions for reconsideration or clarification of the Commission's Third Report and Order in the above captioned proceeding.[2]

I. CIRCUIT SWITCHING ISSUES

A. The Commission Should Not Narrow the Unbundled Local Switching Exception by Revising Upward the Current Four-Line Limitation.

A number of parties seek reconsideration of the Commission's decision to make the applicability of the requirement to unbundle local switching turn in part on whether the requesting carrier seeks to serve a customer with four or more lines. Under the rules set forth in the UNE Remand Order, unbundled switching must always be made available to serve customers with three lines or fewer. However, in certain high density areas, an incumbent is not required to

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[1] *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings,* Public Notice, Report No. 2390 (Feb. 28, 2000) (published in Federal Register at 65 Fed. Reg. 12004 (2000)).

[2] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket No. 96-98 (rel. Nov. 5, 1999) ("UNE Remand Order").

provide unbundled access to local switching at UNE prices for the purpose of serving customers with four lines or more.[3] Parties seeking reconsideration, in an effort to further curtail what is already a relatively narrow exception to the unbundled local switching requirement, ask the Commission to replace the four-line standard with a significantly higher threshold. Specifically, CompTel, MCI WorldCom, and Birch advocate limiting the exception to cases where the end user has a DS-1 interface or higher.[4] AT&T argues for an 8-line threshold.[5]

There is no basis for these requests, and the arguments offered to support them do not bear scrutiny. First, CompTel asserts that the Commission's four-line threshold is "without explanation or record support" and "bears no rational connection to the impairment analysis that Section 251(d)(2) mandates."[6] Other petitioning parties make similar arguments.[7] But in fact, the Commission had ample record evidence demonstrating that, particularly in high-density areas, CLECs have successfully deployed many of their own switches.[8] The Commission correctly perceived that such evidence is directly relevant to the impairment analysis required by section 251(d): "[T]o the extent that the market shows that requesting carriers generally are providing service in particular situations with their own switches, we find this fact to be probative evidence that requesting carriers are not impaired without access to unbundled local circuit switching."[9]

The extensive record evidence of deployment of CLEC switches provides compelling support for a significantly broader local switching exception that the Commission in fact

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[3] *See* UNE Remand Order ¶¶ 276-299.
[4] CompTel Pet. at 3; MCI WorldCom Pet. at 22-23; Birch Pet. at 13.
[5] AT&T Pet. at 13.
[6] CompTel Pet. at 3.
[7] *See* AT&T Pet. at 15; Birch Pet. at 7.
[8] *See* UNE Remand Order ¶¶ 254-55; UNE Fact Report (submitted by USTA in CC Docket 96-98, May 26, 1999) Part I.
[9] UNE Remand Order ¶ 276.

adopted. In particular, as Bell Atlantic argues in its petition for reconsideration, the Commission should not include a number-of-lines limitation in its unbundled switching exception at all, because, "[o]nce a carrier has invested in a switch, it can use that switch to serve single line customers just as easily as it can use that switch to serve customers with four or more lines."[10]

If there is to be a line limitation, however, a four-line threshold makes more sense than a higher number. The Commission adopted a four-line threshold based on its observation that competitive switch deployment has been focused on business customers with "substantial telecommunications needs."[11] In other words, the Commission found that requesting carriers' ability to serve business customers with "substantial telecommunications needs" is not "impaired" within the meaning of section 251(d)(2) if they do not have unbundled access to the ILEC's switching.

The Commission determined that, by setting a four-line threshold, it could separate out virtually all residential customers, leaving only business customers eligible for the exception. Moreover, it found that any business customers with three or fewer lines are, in terms of their participation in the telecommunications market, more akin to residential customers than to business ones. Thus, the agency concluded that the four-line threshold "reasonably captures the division between the mass market -- where competition is nascent -- and the medium and large business market -- where competition is beginning to broaden."[12] In short, there is no basis for the claim that the Commission's decision not to adopt a higher number-of-lines limitation was unexplained or unconnected to section 251(d)(2).

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[10] Bell Atlantic Pet. at 11. U S WEST also agrees with Bell Atlantic that the Commission should eliminate geographic limitations that restrict the unbundled switching exception to density zone 1 and to the top 50 MSAs. *See id.* at 6-11.

[11] UNE Remand Order ¶ 291; *see also id.* nn. 573-74.

[12] UNE Remand Order ¶ 294.

CompTel also asserts -- without any supporting evidence -- that small business and residential customers increasingly have four or more lines, and that four lines therefore is "not the right demarcation point" to distinguish between mass market and residential customers.[13] But even if that assertion is correct, it provides no reason to increase the Commission's four-line threshold. The Commission has effectively determined that, where a customer in a high-density area uses a sufficient volume of telecommunications services, it is economically feasible to serve that customer without access to an incumbent's switch, and the impairment test is not met as to local switching: "[M]arketplace developments suggest that competitors are not impaired in their ability to serve certain high-volume customers in the densest areas."[14] Thus, the supposed point of the line limitation is to distinguish between those customers that use substantial volumes of telecommunications services and those that do not.[15]

The Commission estimated that four lines constitute sufficient volume to give rise to real competitive switching alternatives in high-density areas. Therefore, if a customer has four or more lines -- regardless of whether it is otherwise labeled a "small business" -- there is no impairment within the meaning of section 251(d)(2). Put another way, if an increasing number of small businesses is using four or more lines, that is not evidence that the four- line threshold should be increased to some higher number; rather, it is evidence that the proportion of customers that can be served without unbundled switching, and for whom the impairment test is therefore not met, is growing.

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[13] CompTel Pet. at 4; *see also* Birch Pet. at 8.

[14] UNE Remand Order ¶ 297.

[15] As noted above, it is far from clear that this is a sensible distinction: Once a CLEC has established a switch in a given area, it can use that switch to serve low-volume customers just as easily as high-volume ones. Nonetheless, it was to make such a distinction -- high-volume users versus low-volume users -- that the Commission established the four-line threshold.

MCI WorldCom further argues that a four-line threshold is unworkable because small businesses may experience periodic growth spurts and contractions that would cause changes in their classification under the four-line standard.[16] CompTel and Birch likewise express concern about what will happen when a customers expands from three lines to four or more.[17]

First, it is important to note that this issue is inherent in *any* line or capacity threshold. MCI WorldCom claims that, under current pricing, customers typically find it worthwhile to purchase a DS-1 when they need eight or more access lines.[18] The question then arises: What happens when a customer being served using unbundled switching expands from seven lines to eight, causing it to order a DS-1? And what happens if the customer later contracts, going from eight lines back to seven? Clearly, the issue is no different whether the cross-over point is four or eight.

In any event, the issue does not in fact entail the difficulties that the petitioners suggest. When a CLEC is serving a customer in a high-density area using unbundled switching, and the customer goes from three to four lines, the CLEC need not relinquish the customer -- it simply will have to use an alternative switching arrangement. One possibility would be to continue to purchase switching from the ILEC, but at a negotiated price rather than a regulated one. Another possibility would be to purchase switching from another source: The Commission's switching exception is based on the express finding that, in the high-density areas where the exception applies, carriers have multiple alternatives for switching. The CLEC also would have the option of providing service to the customer under the resale provisions of section 251(c)(4), either

[16] MCI WorldCom Pet. at 22.
[17] *See* CompTel Pet. at 4; Birch Pet. at 9.
[18] MCI WorldCom Pet. at 22.

permanently or as a transitional strategy until an alternative switching arrangement were established. In short, there need not be any disruption to the customer.

Moreover, there is nothing improper or unfair about requiring CLECs, in appropriate circumstances, to transition away from unbundled network elements. Indeed, Congress intended UNEs as a start-up strategy, that, as the Supreme Court held, must be subject to significant limits.[19] Any CLEC providing service using UNEs should be aware that its right to use UNEs is subject to such limits, and should therefore be prepared to look to alternatives where its needs exceed those limits. Therefore, there is no basis for a "grandfathering" scheme like that suggested by Birch.[20] The fact that a CLEC initially serves a customer using unbundled switching does not and should not create an entitlement for the CLEC to continue to rely on the ILEC's facilities for all time, regardless of whether the customer grows into a major corporation and without regard to whether the element continues to satisfy the impairment test of section 251(d)(2). The idea that CLECs will transition away from UNEs where feasible is precisely what Congress envisioned.[21]

Finally, AT&T argues that the threshold should be set at the number of lines that makes it economically feasible to bypass the individual loop hot-cut provisioning process. AT&T estimates that this requires at least eight lines.[22] However, as the Commission found in the UNE Remand Order, CLECs do not have to avoid the individual hot-cut process entirely in order to

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[19] *See AT&T Corp. v. Iowa Util. Bd.*, 119 S.Ct. 721, 734-36 (1999); UNE Remand Order ¶ 6 (describing unbundling as a "transitional arrangement" and noting "Congress's expectation that "new competitors would use unbundled elements from the incumbent LEC until it was practical and economically feasible to construct their own networks.").

[20] *See* Birch Pet. at 8-9.

[21] At the very least, any grandfathering should apply only to the original three lines and should be limited in duration, so as to provide the CLEC with *temporary* assistance in maintaining existing service levels during its transition to alternative switching arrangements.

[22] AT&T Pet. at 16.

have a realistic ability to use non-ILEC sources of switching. Rather, where customers have a sufficient volume of traffic and hence generate sufficient revenues, it becomes economically feasible for CLECs to take on the costs and difficulties associated with the individual loop cutover process.[23] Thus, the Commission reasonably targeted its threshold at the number of lines where it viewed volume as being high enough to make the individual cutover process a tolerable burden, not the number where the individual loop cutover process can be bypassed entirely.

B. There Is Substantial Merit to the Requests of Bell Atlantic and Intermedia That the Commission Reexamine Its Use of Density Zone 1 as a Factor in Determining the Applicability of the Unbundled Local Switching Exception.

Bell Atlantic asks the Commission to reexamine its use of density zone 1 to determine the scope of the exception to the unbundled local switching requirement. Bell Atlantic maintains that "limiting switch unbundling relief to access Zone 1 areas artificially and arbitrarily excludes significant areas that are already served by competitors' own local switches."[24] U S WEST agrees and believes that reconsideration of this issue is warranted.

U S WEST also agrees with Intermedia, which argues that the Commission should take further evidence so that it can adequately consider the uneven impact of a zone 1 limitation. As Intermedia notes, "ILECs have disparate definitions of rate zone 1," and the Commission's decision to use density zone 1 was based solely on rate zone information submitted by a single carrier, BellSouth.[25] Indeed, the Commission acknowledged that "the record does not contain similar data for other incumbent LECs" and that its decision to use density zone 1 was based on "limited evidence."[26]

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[23] *See* UNE Remand Order ¶ 297.

[24] Bell Atlantic Pet. at 8.

[25] Intermedia Pet. at 16; *see also* UNE Remand Order ¶ 285 ("We recognize that only one commenter, BellSouth, provided detailed data to describe where requesting carriers have deployed switches in density zone 1.").

[26] UNE Remand Order ¶ 285.

Intermedia points out that Bell Atlantic's definition of density zone 1 is very different from that of BellSouth.[27] The same is true for U S WEST. While BellSouth defines density zone 1 by exchange areas -- so that the zone 1 area associated with a major urban center like Atlanta covers a relatively large geographic area -- U S WEST defines density zones on a wire center by wire center basis. Accordingly, the zone 1 area associated with an urban center in U S WEST's region is significantly smaller than the zone 1 area associated with a comparable urban center in BellSouth's region. Moreover, the Commission has locked in such differences and prevented any possible move towards conformity by "freezing" ILEC density zone definitions as of January 1, 1999 for purposes of unbundling obligations.[28]

Accordingly, far from producing a uniform national rule, the Commission's reliance on density zone 1 as a criterion for the local switching exception has the effect of producing strikingly different unbundled switching regimes in different geographic areas. In particular, the current unbundled switching exception is, as a practical matter, much narrower in U S WEST's region than in BellSouth's -- even though the Commission expressly found that the broader exception is warranted under the impairment test of section 251(d)(2).

One possible way to address this problem would be to permit other ILECs to use the same density zone 1 definition as BellSouth. For example, the Commission could indicate that it will be favorably disposed to ILEC waiver petitions seeking such permission. Since the Commission has expressly endorsed BellSouth's use of that particular density zone definition as a basis for the local switching exception in the BellSouth region, there is no basis for prohibiting other ILECs from using that definition as well. In any event, the Commission should adopt

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[27] Intermedia Pet. at 16.
[28] *See* UNE Remand Order ¶ 286.

Intermedia's suggestion to address this issue by augmenting the record and adopting a supplemental order based on more complete information.[29]

II. PACKET SWITCHING ISSUES

A. The Commission's Decision To Refrain from Requiring the Unbundling of Packet Switching Was Fully Justified as a Matter of Both Law and Policy and Should Not Be Modified.

The Commission should deny the Petitions for Reconsideration that seek a Commission order to unbundle packet switching.[30] The Commission found that although the costs and delays associated with collocation may impair the CLECs' ability to provide advanced services to residential and small business customers,[31] the Commission should also consider "whether unbundling will open local markets to competition and how access to a given network element will encourage the rapid introduction of local competition to the benefit of the greatest number of customers."[32] This decision declining to impose an obligation to unbundle packet switching is fully supported by both the law and the factual record.[33]

First, contrary to the suggestions of CompTel and MCI,[34] the Commission's consideration of additional factors in conducting its unbundling analysis was not unlawful or legally indefensible. Indeed, the Act provides that the Commission must consider "at a minimum" whether the failure to provide access to non-proprietary network elements would "impair" a CLEC's ability to provide the services it seeks to offer.[35] This plainly allows the Commission to

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[29] Intermedia Pet. at 16-17.
[30] *See* CompTel Pet. at 5-9; Intermedia Pet. at 3-13; MCI Pet. at 2-12.
[31] The Commission found that the CLECs are not impaired in their ability to provide advanced services to medium and large businesses. UNE Remand Order ¶ 306.
[32] UNE Remand Order ¶ 309.
[33] U S WEST submits that the impair test, as clarified by the Supreme Court, clearly excludes packet switching. These comments are based on the Commission's decision that CLECs are impaired as to residential and small business customers.
[34] *See* CompTel Pet. at 7; MCI Pet. at 9-12.
[35] 47 U.S.C. § 251(d)(2)(B).

consider additional factors in limiting the network elements that must be unbundled. As the mandatory unbundling rules often result in a physical taking of ILEC property, it is certainly understandable why Congress would establish minimum standards that limit the Commission's authority to require the unbundling of elements that fail those standards, while allowing the Commission to consider additional factors that would further limit (but not expand) the ILECs' unbundling obligations beyond those minimum standards.

Moreover, the Supreme Court's decision fully supports the Commission's decision to generally decline to unbundle packet switching. Rather than suggesting that the Commission could not further limit the network elements that must be unbundled, the Court required that the Commission "apply *some* limiting standard" and "determine on a rational basis *which* network elements must be made available, taking into account the objectives of the Act and giving some substance to the 'necessary' and 'impair' requirements."[36] The Commission's decision to further limit packet switch unbundling by considering "whether unbundling will open local markets to competition and how access to a given network element will encourage the rapid introduction of local competition to the benefit of the greatest number of customers,"[37] was clearly rational and completely consistent with the language of the Act. While the Commission clearly cannot ignore the existing impairment standard and require the unbundling of elements that fail that test, the Act permits the Commission to consider the public interest in determining whether ILECs should be relieved of an unbundling obligation for a given network element even though it otherwise meets the impair test.

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[36] *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 734, 736 (1999) (emphasis in original).
[37] UNE Remand Order ¶ 309.

Furthermore, section 706 allows—and indeed requires—the Commission to take action to encourage the deployment of advanced services.[38] The Commission's decision not to unbundle packet switching was explicitly based on its concern that it "not stifle burgeoning competition in the advanced service market," and that "regulatory restraint on [the Commission's] part may be the most prudent course of action in order to further the Act's goal of encouraging facilities-based investment and innovation," and achieve the "overriding objective" of Section 706 to "to ensure that advanced services are deployed on a timely basis to all Americans."[39] The Act quite clearly does not require unbundling which impedes the development and deployment of advanced services.

MCI simply has no basis for suggesting that the Commission based its decision "*solely* on self-serving and false assertions by several Bell Companies that 'their incentive to invest and innovate in new technologies' would be curtailed if they were required to unbundle packet switching."[40] Basic economic theory indicates that if incumbents are forced to unbundle their new investments and proprietary innovations, they will have less incentive to engage in such investments.[41] Thus, while the record indicates that ILECs are presently devoting resources to the deployment of advanced services despite the spectre of potential unbundling,[42] there can be little doubt that an unbundling requirement would dampen their investment incentive, and "stifle burgeoning competition in the advanced services market."[43] Conversely, if CLECs can rely on ILEC investments and innovations, they will have diminished incentives to take on the expense and risks associated with such investments.

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[38] 47 U.S.C. § 157 note.
[39] UNE Remand Order ¶¶ 316-17.
[40] MCI Pet. at 9 (quoting UNE Remand Order ¶ 314) (emphasis in original).
[41] *See* USTA Comments, Joint Affidavit of Jerry A. Hausman and J. Gregory Sidak ¶¶ 75-79.
[42] *See* UNE Remand Order ¶ 315.
[43] *Id.* ¶ 316.

There is similarly no basis to Intermedia's claim that declining to unbundle packet switching is inconsistent with the Commission's decision in the Advanced Services docket, wherein the Commission found that resale obligations do apply to advanced services. Simply concluding that advanced services are generally subject to Section 251 does not answer whether specific advanced services facilities must be unbundled.

Finally, the record fully supports a conclusion that CLECs are not impaired without unbundled access to packet switching.[44] The Commission specifically recognized that "[b]oth the record in this proceeding, and [its] findings in the *706 Report*, establish that advanced service providers are actively deploying facilities to offer advanced services such xDSL across the country," and that "[c]ompetitive LECs and cable companies appear to be leading the ILECs in their deployment of advanced services."[45] The Commission also recognized that ILECs do not "possess significant economies of scale in their packet switches compared to the requesting carriers."[46]

B. The Commission Should Reject AT&T's Attempt To Eviscerate the Commission's Legitimate Limitations on Packet Switch Unbundling and Line Sharing by Creating an Entitlement to UNE-Priced DSLAMs in the UNE-P Context.

AT&T asks the FCC to find that, where a CLEC uses the UNE "platform" ("UNE-P") to provide local service to a customer, the CLEC should be entitled to demand that the ILEC

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[44] Moreover, as the Commission recognized, even some of the CLECs conceded that packet switching need not be unbundled. UNE Remand Order ¶ 307 (citing to Northpoint's assertion at pages 18-19 of its comments that, with access to loops and collocation, any CLEC could provide DSLAMs and packet switching).

[45] UNE Remand Order ¶ 307. U S WEST also notes that Covad has touted itself "[a]s the leading national DSL broadband services provider," with a network that "currently covers more than 25 million and businesses in major Metropolitan Statistical Areas (MSAs)," and services "available across the States in 56 of the top Metropolitan Statistical Areas (MSAs)." *See* Covad's Web Page (available at http://www.covad.com/covad_overview.cfm).

[46] UNE Remand Order at ¶ 308.

provide it with an xDSL-equipped loop to serve that customer.[47] This would mean that (i) the ILEC would be required to do the work of installing a DSLAM on the UNE-P loop in order to divide the loop into voice and xDSL data channels, and (ii) the CLEC would be able to purchase the use of that DSLAM at UNE prices. AT&T asserts that such requirements are necessary to enable a CLEC to bundle its UNE-P voice service with xDSL service provided by the CLEC or a data CLEC partner.[48]

There is no basis for AT&T's suggestion that, absent a grant of its request, CLECs will be unable to provide bundled packages that include xDSL. CLECs are free to attach their own xDSL electronics to the UNE loops they purchase, and the Commission has rightly found that it is feasible for them to do so.[49] Once such electronics have been installed, a CLEC may provide xDSL itself or may enter into a line sharing agreement with a data CLEC. AT&T's apparent complaint is that it simply doesn't want to do the work of obtaining collocation space and installing a DSLAM -- the precise work that the Commission, in declining to require unbundling of packet switching capability, has effectively held that CLECs can reasonably be expected to undertake.[50]

Of course, AT&T would argue that, once it takes the step of obtaining collocation, it no longer is getting the true UNE-P, where the UNE-P is understood to mean full reliance on the

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[47] AT&T Pet. at 1-11.

[48] *Id.* at 4.

[49] *See* UNE Remand Order ¶ 307 ("[A]dvanced service providers are actively deploying facilities to offer advanced services such as xDSL across the country. Competitive LECs and cable companies appear to be leading the incumbent LECs in their deployment of advanced services . . . Marketplace developments such as the ones described above suggest that requesting carriers have been able to secure the necessary inputs to provide advanced services to end users in accordance with their business plans."); *id.* ¶ 308 ("DSLAMs . . . are available on the open market at comparable prices to incumbents and requesting carriers alike.").

[50] DSLAMs are included within the Commission's definition of packet switching. UNE Remand Order ¶ 303.

incumbent's preassembled network. But AT&T does not have an entitlement to compete on a pure UNE-P basis in all locations and under all circumstances. The UNE-P is available only where the Commission's rules require unbundling of each of the individual elements that a requesting carrier seeks. For example, in high density areas where the local switching exception applies, a CLEC may not compete on a UNE-P basis, because one element -- local switching -- is not available as a UNE. Accordingly, a CLEC must assemble its service out of those UNEs that are available, plus local switching from some other source.

Similarly here, AT&T's desire for DSLAM functionality does not entitle it to expand the platform to include an item for which the Commission has already determined that no unbundling should be required. Rather, AT&T may piece together its desired service by purchasing all of the UNEs that make up voice service, and combining these with a DSLAM at its own collocation space. Any ruling to the contrary -- that is, permitting CLECs to obtain unbundled DSLAMs at UNE prices wherever they compete using the UNE-P -- would cut the heart out of the Commission's decision that DSLAMs are not subject to the unbundled access requirements and thereby undermine the Commission's effort to "foster the Act's goal of encouraging facilities-based investment and innovation" in the advanced services market.[51]

Moreover, to the extent that AT&T intends to provide xDSL to its UNE-P voice customers "in partnership with a third party,"[52] what AT&T is really seeking here is reconsideration of a decision that the Commission made in the *Line Sharing Order*, not the UNE Remand Order. AT&T wants to require the ILEC to perform the task of splitting the loop into voice and data channels so that it can be shared between a voice CLEC and a data CLEC. In other words, AT&T is seeking to have the ILEC provide line sharing on UNE-P loops.

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[51] UNE Remand Order ¶ 316.
[52] AT&T Pet. at 5.

The Commission addressed this very issue in the Line Sharing Order, and held that ILECs are *not* required to provide line sharing in this circumstance:

> [I]ncumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops on which the incumbent LEC is also providing analog voice service . . . [I]ncumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform. In that circumstance, the incumbent no longer is the voice provider to the customer.[53]

Moreover, forcing an ILEC to provide line sharing between two CLECs would be bad policy, because it would effectively put the ILEC in the middle of a business relationship between two other parties -- a cumbersome and inefficient arrangement.

III. LOOP-RELATED ISSUES

A. The Commission Should Reject Petitions That Seek To Deny ILECs Compensation for the Actual Costs That They Incur in Conditioning Loops on Behalf of CLECs.

Several petitioning parties argue that ILECs should not receive any compensation for the costs they incur in conditioning loops for requesting carriers.[54] These parties claim that permitting ILECs to be compensated for such costs would be inconsistent with the Commission's forward-looking pricing methodology for UNEs.

Covad and Rhythms presented the same argument in their comments, and the Commission expressly rejected it.[55] No other outcome would make sense: If ILECs are to be required to perform work on behalf of requesting carriers, as the Commission's rules provide in the case of loop conditioning, the ILECs must be reimbursed for the associated costs.

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[53] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Third Report and Order, FCC 99-355, CC Docket 98-147 (rel. Dec. 9, 1999) ("Line Sharing Order") ¶ 72.

[54] *See* MCI WorldCom Pet. at 15-17; Rhythms and Covad Pet.; @Link Pet.

[55] *See* UNE Remand Order ¶ 192.

There is no merit to the argument that forward-looking pricing principles require a different result. The forward-looking pricing methodology that the Commission has adopted is designed to answer the following question: What is the economic cost to the ILEC *today* of providing a requesting carrier with a facility that was constructed at some point in the past? By contrast, loop conditioning is a *current* expense, not an already constructed facility. The economic cost *today* of conditioning a loop *today* is simply the actual expense incurred in conditioning that loop. That cost is what the ILEC is entitled to recover. Denying such recovery on the theory that no conditioning would be necessary in an ideal world -- in effect, assuming away a real, present cost -- would be inconsistent with the requirement of the 1996 Act that ILECs shall receive cost-based compensation.[56]

Indeed, a full application of the petitioners' argument would lead quickly to absurd results. Under the petitioners' theory, a CLEC would be able to demand at any time that an ILEC upgrade network facilities on the CLEC's behalf for *free*. All the CLEC would need to show is that, turning a blind eye to reality, the upgrade "should" already be in place because an ideally efficient network with up-to-the-minute technology would already incorporate the capability in question. The CLEC would then command the ILEC to perform the very upgrade that, under the petitioners' bizarre theory, is treated as if it is already in place. Plainly, such an exercise in twisted logic cannot justify compelling ILECs to perform real, costly upgrade work for CLECs without receiving any compensation. If the compensation were not paid by CLECs themselves, it would eventually have to be paid by the U.S. Government in the form of takings liability.

[56] *See* 47 U.S.C. § 252(d)(1).

Moreover, denying compensation for loop conditioning would distort competition in the market for DSL services. ILECs do not have the luxury of using a theoretical cost model to assume away loop conditioning costs. Rather, if an ILEC wants to provide DSL service to a customer whose loop needs conditioning, the ILEC must bear the expense of conditioning that loop. Allowing competitive carriers to avoid (and indeed shift to the ILEC) some or all of such loop conditioning expenses would give them a major and artificial advantage in competing for the same customer. Tilting the playing field in this fashion is not what Congress intended and would not be good policy.

B. The Commission Should Refuse McLeodUSA's Request To Deny ILECs Compensation for Special Costs That the ILECs Must Incur in Certain Areas in Order To Accommodate Requests for Unbundled Access to the Loop.

McLeodUSA asks the Commission to disallow ILEC cost recovery of the construction expenses associated with making certain loops -- specifically, loops provided by Integrated Digital Loop Carrier ("IDLC") technology -- available to requesting carriers on an unbundled basis. McLeodUSA's chief argument is that IDLC loops are an antiquated technology that would not be included in the ideally efficient network that is assumed by forward-looking pricing models.[57]

In fact, IDLC technology often offers the most cost effective way to expand a network, because it enables services to be delivered using remote terminal sites rather than requiring the establishment of full length copper loops all the way to the central office. Accordingly, there is no basis for a forward-looking pricing model to ignore the real costs associated with adapting IDLC loops to make unbundled access possible. Moreover, as in the case of the loop conditioning costs discussed above, the costs of facilitating the unbundling of an IDLC loop are

[57] *See* McLeodUSA Pet. at 6.

present costs associated with a *present* request for unbundled access, not *embedded* costs that were incurred in the past. Forward-looking pricing methodologies are designed to set prices for previously constructed assets, and in the course of doing so exclude embedded costs -- but there is no basis for asserting that such methodologies can or should operate to assume away real *current* costs.

Consistent with this analysis, the Commission in the First Interconnection Order expressly stated that an ILEC's costs in adapting IDLC loops to accommodate unbundled access "will be recovered from requesting carriers."[58] There is no "ambiguity" in that statement, as McLeodUSA implausibly suggests:[59] The Commission obviously had concluded that recovery of the costs in question from requesting carriers should be permitted, and it perceived no conflict between that conclusion and the forward-looking pricing principles that the agency was adopting in the same order. The Commission should reaffirm its earlier position and reject McLeod's suggestion that it prohibit ILECs from recovering such costs.

IV. OTHER ISSUES

A. The Commission Should Adhere To Its Decision Rejecting the Unbundling of AIN Triggers.

Low Tech urges the Commission to reconsider its decision not to require unbundling of AIN triggers and interconnection of ILEC signaling networks to third-party AIN platforms. Low Tech argues principally that there is "ample evidence" that such unbundling and interconnection are technically feasible.[60]

In fact, there is far greater uncertainty concerning technical feasibility than Low Tech suggests, and the "evidence" that Low Tech cites is inapposite. For example, Low Tech

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[58] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499 ¶ 384 (1996).
[59] McLeodUSA Pet. at 7.
[60] Low Tech Pet. at 2.

maintains that the deployment of the Government Emergency Telecommunications System (GETS) indicates that it is technically feasible to provide non-ILEC parties with access to AIN triggers and to allow such parties to connect their own AIN platform elements to the ILEC's network.[61] But contrary to Low Tech's apparent understanding, GETS does *not* involve an ILEC making AIN triggers available to a third party or interconnecting its network to a separate AIN platform. Rather, GETS is a service that the ILEC provides to the government, and the ILEC remains in complete control of the AIN trigger and platform at all times. The existence of GETS says nothing about the feasibility of Low Tech's request.

Mandatory unbundling of AIN triggers and interconnection with third-party AIN platforms would pose a serious threat to the reliability of the network and the protection of proprietary customer information. AIN triggers are a function of a software feature in the switch, and access to the AIN trigger entails substantial control over the subscriber's phone line. If multiple requesting carriers were to purchase unbundled access to the AIN trigger at a particular switch, the risk of service problems at that switch would increase dramatically. The ILEC would have no means to ensure the continued proper treatment of calls traversing that switch.

This risk is exacerbated by the lack of standardization in AIN trigger software. There are multiple vendors that create AIN triggers. Moreover, AIN triggers are highly customized to meet individual LECs' network specifications and, more specifically, to send and receive information to and from the particular databases in individual LECs' AIN platforms. Therefore, "unbundled" AIN triggers would have substantial difficulty communicating with separate AIN database platforms that are not part of the networks for which the triggers were designed. As a

[61] *Id.* at 4.

result, the possibility of a third-party AIN database sending incompatible data to an ILEC's AIN trigger is very real. In particular, there is a serious risk that differently configured data from a differently configured platform could paralyze or otherwise impair the proper functioning of an AIN trigger, which in turn could seriously impede the operation of the associated switch. The end result could be an interruption of basic telephone service to the specific customer served by the alternative AIN provider, or a more general switch failure that would require the entire switch to be taken offline. Mitigating such risks would require extensive and intrusive advance testing.

In addition, AIN triggers and AIN databases contain a significant amount of proprietary information concerning individual telephone subscribers. Therefore, a third-party service provider purchasing unbundled access to an AIN trigger in order to provide specific *AIN services* to a particular customer would at the same time gain access to substantial proprietary information concerning that customer's use of *other* telephone services. Moreover, the third-party service provider's access to the AIN trigger could give it the ability to modify some of this customer-specific information, either purposefully or inadvertently. Examples for potential abuse would include overriding the customer's choice of long distance provider, overriding the customer's dialed 10XXXXX number to cause "per call slamming," changing the customer's privacy election, or altering important billing or service data. The point is that all of this would be beyond the control of the ILEC (or the CLEC) that provides the customer's underlying telephone service and that is supposed to be responsible. In short, mandatory unbundling of AIN triggers would seriously compromise the security of proprietary, customer-specific information.

B. The Commission Should Adhere To Its Decision That the Unbundling of Enhanced Extended Link Should Not Be Required at This Time.

The Commission should deny the Petitions for Reconsideration that seek a Commission order requiring that combinations of loops and transport elements known as the "enhanced extended link" ("EELs") be made generally available as a separate network element.[62] The Commission declined to require the general unbundling of EELs because the issue of whether an ILEC must combine elements that are not currently combined in the network is pending before the Eighth Circuit.[63] Tabling this issue until the Eighth Circuit resolves the legal uncertainty regarding the combinations issue was a reasoned and prudent decision, and Comptel and Intermedia offer no reason to stray from it.

Finally, U S WEST also notes that a requesting carrier's degree of need for unbundled circuit switching is closely related to whether or not the ILEC is providing an EEL.[64] Specifically, the rationale for providing a requesting carrier with unbundled access to a particular switch is substantially undermined if the carrier can obtain EELs that enable it to serve the same customers using a switch located elsewhere. Accordingly, if the requirement to unbundle EELs is expanded, the circuit switch unbundling requirement should be simultaneously reduced.

C. The Commission Should Reject MGC's Request To Add Intrusive and Overly Regulatory Requirements to Existing Dark Fiber Unbundling Obligations.

The Commission should generally reject the Petition for Reconsideration of MGC, which seeks additional obligations with respect to the unbundling of dark fiber.[65] U S WEST does not, however, object to MGC's request that the Commission order ILECs to enter into negotiations concerning the terms and conditions of providing dark fiber prior to the effective date of the

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[62] CompTel Pet. at 10-14; Intermedia Pet. at 13-15.
[63] UNE Remand Order ¶¶ 480-81.
[64] *See id.* ¶ 278.
[65] MGC Pet. at 4-6.

obligation to make dark fiber available. In fact, U S WEST has already engaged in such negotiations.

The Commission should reject MGC's request that ILECs be prohibited from reserving dark fiber for planned customer commitments that exceed 6 months. This request ignores the reality of providing service to customers in the northern states, where the ground may be frozen for many months, or where an ILEC may not otherwise be able to complete a construction plan within six months. A better standard for dark fiber reservation would be to allow an ILECs to reserve needed capacity where the ILEC has fully funded—i.e., actually budgeted the resources to complete—a given customer commitment. MGC's request also ignores the need for a carrier to maintain maintenance spares in its network, which are necessary to ensure uninterrupted service to its customers when a given fiber facility become inoperative.[66]

Finally, there is no need to establish additional safeguards suggested by MGC for dark fiber unbundling. First, there is no need to establish an additional "first-come, first-served" requirement.[67] The Act already imposes a non-discrimination requirement in providing access to UNEs.[68] Nor is there a need to establish safeguards to prevent the transfer of dark fiber to affiliates.[69] The "successor or assign" rule already accomplishes this by making network

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[66] U S WEST also notes that the Commission specifically recognized that an ILEC may need fiber reserves to fulfill its carrier-of-last-resort obligations, and allowed the states to establish reasonable limitations on dark fiber unbundling to address such concerns. UNE Remand Order ¶ 352.

[67] MGC Pet. at 2.

[68] See 47 U.S.C. § 251(c)(3); see also 47 C.F.R. § 51.313 (providing that "[t]he terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers.")

[69] MGC Pet. at 6.

elements transferred to a BOC affiliate subject to the same unbundling obligations as if they had remained with the BOC.[70]

D. The Commission Need Not Adopt Rules Concerning ILEC Disclosure of Information on Remote Termination Points, But If Rules Are Adopted They Should Follow the Commission's Approach to Loop Qualification Information.

MCI WorldCom asks the Commission to adopt rules governing the information that ILECs must provide to CLECs concerning the geographic location and technological characteristics of remote termination points.[71] U S WEST is prepared to provide CLECs with specific loop information upon request, including information concerning any remote termination point associated with a given customer's loop. U S WEST therefore does not believe that a detailed set of rules is necessary. But if the Commission chooses to address this issue, with rules or otherwise, U S WEST believes that the Commission should follow the approach that it took to loop qualification information. In the UNE Remand Order, the Commission held that an ILEC is required to provide CLECs with whatever loop conditioning information the ILEC has itself, but is not required to go out and do a new inventory or create a new database on a CLEC's behalf.[72] Similarly here, the Commission should not require an ILEC to engage in resource-intensive information gathering projects on behalf of CLECs. To the extent that the Commission does impose any such obligations upon ILECs, CLECs clearly must be required to compensate ILECs for their efforts.

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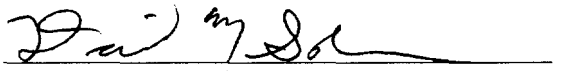
[70] *See* 47 C.F.R. § 53.207; 47 U.S.C. § 153(4).

[71] MCI WorldCom Pet. at 23-24.

[72] UNE Remand Order ¶ 429 ("If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers.").

Respectfully submitted,



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March 22, 2000

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I, John Meehan, do hereby certify that on this 22nd day of March, 2000, I caused true and correct copies of the foregoing Response of U S WEST, Inc., to Petitions for Reconsideration and Clarification to be served by first class mail, postage prepaid, or by hand* via courier, upon the following parties:

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